

REMARKS

The Restrictions/Election Requirements

Applicant hereby provides the following remarks on the restriction/election requirements of the inventions of Group I through Group XXIV (Election/Restriction of 03/23/2009), and Applicant respectfully requests reconsideration and withdrawal thereof.

First, Applicant hereby provisionally elects, with traverse, Group V. All of claims 1-22 read at least in part as being within Group V. Applicant respectfully traverses this rejection, because claims 1-22 relate to a Markush group reciting a common core and are useful for the same function, treating cancer.

Applicant hereby distinctly and specifically points out the following errors in the restriction requirement, and requests that the inventions of Groups I-XXIV be examined together since they do indeed have a common structural core; namely, quinoline derivatives/analogs, and a common function; namely, treatment of cancer. In a first alternative, Applicants respectfully request examination of Group V. In a second alternative, Applicant respectfully requests that Group V and XIII be examined together since these groups have a common structural feature and a common function as disclosed in the as-filed application and it is not an undue burden to search these claims.

On the issue of traverse, Applicants respectfully submit that the subject matter of claims 1-22 do have a common core which is that of quinoline or quinoline derivative/analogs and therefore all claims should be examined together. More specifically, the alternatives recited in claim 1-22 all refer to compounds that have a common denominator core of 2 fused 6 member rings wherein one ring atom is a nitrogen and thus can be considered as having a common "quinoline-type core". Applicant therefore respectfully requests that the

Examiner examine the subject matter of Groups I-XXIV together given the common core coupled with common use for treating cancer/intercalating DNA.

In support of the Applicants' asserted second alternative, Applicants request that the subject matter of Group V and XIII be examined together. The inventions of these Groups (V and XIII) recite a compound of Formula G1-L-G2 where G1 and G2 have a quinoline type core as defined by Formula II and G1 is linked to G2 via a linker moiety. The difference between the groups (V and XIII) as defined by the Examiner is that "B" can be - CONH- or -CH₂nNH- in the group V and in Group XIII "B" can be -NR13, O, or -(CH₂)nO-. The difference in "B" between the two groups does not destroy the common structural core present in the Group V and Group XIII claims. Applicant therefore respectfully requests that the subject matter of these claims be examined together.

Still furthermore as to the traverse, the Office Action provides but a mere conclusory statement that the inventions are independent or distinct, and does not provide concise reasons for distinctness of any of the inventions in this case which is improper as Applicants then have no means for arguing the impropriety thereof. See MPEP 806.06(h), which states that the burden is on the examiner to provide an example. Here, the Office Action merely states that there is no common core, without providing examples or illustrations of the same, nor concise reasons for distinctness of any of the inventions.

There is not enough factual development in the election requirement to determine whether there is any distinctness between the inventions; rather there exists only speculation and/or unsupported conclusion. This is why the MPEP explains that "[a] mere statement of conclusion is inadequate." See MPEP 808, where reason is distinguished from a mere statement of conclusion. Thus, what is argued here is that the Examiner's burden has not been met by the mere conclusory statements without reasonable factual development of distinctiveness within the scope and interpretation of the claims. The Examiner's burden not being met, then the restriction/election requirement fails.

Applicant therefore respectfully requests reconsideration and withdrawal of all election requirements and consequently examination and allowance of all claims pending in this application; namely claims 1-22.

CONCLUSION

Applicant respectfully requests that all of the claims be examined. A timely Notice of Allowance is requested to be issued in this case. Applicants believe no fees or petitions are due with this filing. However, should any such fees or petitions be required, please consider this a request therefore and authorization to charge Deposit Account No. 02-2093 as necessary.

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Respectfully submitted,

/peterbscull/

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